

1 a reasonable doubt that the state of mind or belief
2 required for guilt existed.

3 During the course of the trial, you have
4 heard evidence of unsworn statements of a witness
5 occurring before trial. By way of example, the audio-
6 and video-taped interviews of Stacey Smith prior to
7 trial by Detective Paul Parsons. Such testimony is
8 permissible under a provision of a Delaware statute
9 which reads, in pertinent part, as follows:

10 "(a) In a criminal prosecution, the
11 voluntary out-of-court statement of a witness
12 who is present and subject to cross-examination
13 may be used as affirmative evidence with
14 substantive independent testimonial value.

15 "(b) The rule in Subsection (a) of this
16 section shall apply regardless of whether the
17 witness' in-court testimony is consistent with
18 the prior statement or not."

19 With regard to this provision, caution must
20 be exercised by you, the jury, when a conflict exists
21 between the out-of-court statements and the in-court
22 testimony or when a conflict exists among the
23 out-of-court statements themselves. The jury should be

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1 particularly careful if there is no evidence to
2 corroborate an inconsistent out-of-court statement.
3 Nevertheless, you, as the jury, may convict on such
4 statement if you are satisfied beyond a reasonable
5 doubt that the statement is true.

6 There are two types of evidence from which
7 you, as the jury, may properly find the facts of the
8 case. One is direct evidence. The testimony of an
9 eyewitness is an example of direct evidence. The other
10 is indirect or circumstantial evidence. That is, the
11 proof of facts or circumstances from which the
12 existence or non-existence of other facts may
13 reasonably be inferred.

14 In this case, the State and the defendant
15 have relied, in part, upon circumstantial evidence. It
16 is not unusual in a criminal case to rely upon
17 circumstantial evidence. To warrant a conviction, all
18 the evidence, direct and circumstantial, must lead you
19 to conclude beyond a reasonable doubt that the accused
20 committed the offenses charged.

21 In this case, the parties have stipulated to
22 certain facts. A stipulation that is in evidence is an
23 agreement by both parties that those facts giving rise

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1 to the stipulation require no further proof. You must
2 accept these facts as true for purposes of this trial.

3 Ladies and gentlemen, during the course of
4 this trial, you have heard evidence which you might
5 regard as evidence of other bad acts. This evidence
6 was offered by the prosecution in the context of
7 demonstrating the mental state or motive that the State
8 alleges the defendant had. It cannot be used for any
9 other purpose. The weight that you give this evidence,
10 if any, as it pertains to the defendant's mental state
11 or motive is entirely for you to decide in your
12 discretion as you see fit.

13 While I allowed the introduction of this
14 evidence, as a matter of law, you are not, in any way,
15 to interpret that decision as any reflection of the
16 Court's view of the evidence or the weight, if any, to
17 which it is entitled. I want you to understand that
18 you must not use this evidence to infer that the
19 defendant is a person of bad character who, because of
20 bad character, is more likely to be guilty of any one
21 of the offenses charged. You are required to consider
22 all the evidence that is introduced before you in order
23 to determine whether the State has met its burden of

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1 proving guilt beyond a reasonable doubt.

2 Ladies and gentlemen, you, as the jury, are
3 the sole judge of the credibility of each witness who
4 has testified and of the weight to be given to the
5 testimony of each. If you should find the evidence in
6 this case to be conflict, then it is within your
7 province to reconcile the conflicts, if you can, so as
8 to make one harmonious story of it all. If you cannot
9 reconcile these conflicts, then it is your duty to give
10 credit to that portion of the testimony which you
11 believe is worthy of credit and you may disregard that
12 portion of the testimony which you do not believe to be
13 worthy of credit.

14 In considering the credibility of witnesses
15 and in considering any conflict in testimony, you
16 should take into consideration each witness' means of
17 knowledge, strength of memory and opportunity for
18 observations; the reasonableness or unreasonableness of
19 the testimony; the consistency or inconsistency of the
20 testimony; the motives actuating the witness; the fact,
21 if it is a fact, that the testimony has been contra-
22 dicted; the witness' bias, prejudice, or interest in
23 the outcome of this litigation; the ability of the

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1 witness to have acquired the knowledge of the facts to
2 which the witness testified; the manner and demeanor of
3 the witness while on the witness stand; the apparent
4 truthfulness of the testimony; and any and all other
5 facts and circumstances shown by the evidence which
6 affects the credibility of the testimony.

7 Ladies and gentlemen, the role of an attorney
8 is to zealously and effectively advance the claims of
9 the party that he or she represents within the bounds
10 of the law. An attorney may argue all reasonable
11 inferences from evidence in the record. However, it is
12 not proper for an attorney to state his or her personal
13 opinion as to the truth or falsity of any testimony or
14 evidence or his or her opinion as to the guilt or
15 innocence of an accused.

16 What an attorney personally thinks or
17 believes about the testimony or evidence in a case is
18 not relevant, and you are instructed to disregard any
19 personal opinion or belief concerning testimony or
20 evidence which an attorney may have offered during the
21 course of this trial.

22 Further, what an attorney states in his or
23 her opening or closing arguments is not evidence.

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1 Evidence consists of testimony from witnesses
2 testifying from the witness stand and exhibits
3 introduced through their testimony. It is this
4 evidence alone which you may consider in reaching your
5 verdicts.

6 I instruct you that your verdict must be
7 based solely and exclusively on the evidence in this
8 case; that you cannot be governed by passion,
9 prejudice, sympathy, public opinion, or any motive
10 whatever except a fair and impartial consideration of
11 the evidence; and that you must not, under any
12 circumstances, allow any sympathy which you might have
13 or entertain for any of those involved to influence you
14 in any degree whatsoever in arriving at your verdict.

15 The fact, if it is a fact, that the criminal
16 acts were committed while the defendant was in a state
17 of intoxication or were committed because of such
18 intoxication, is no defense to any criminal charge if
19 the intoxication was voluntary. "Intoxication" means
20 the inability, resulting from the introduction of
21 substances into the body, to exercise control over
22 one's mental faculties.

23 "Voluntary intoxication" means intoxication

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1 caused by substances which the actor knowingly
2 introduces into his body, the tendency of which to
3 cause intoxication he knows or should know, unless he
4 introduces them pursuant to medical advice or under
5 such duress as would afford a defense to a prosecution
6 for a criminal offense.

7 Ladies and gentlemen, during the course of
8 the testimony, on more than one occasion, a witness
9 referred to someone as "the victim". You will recall
10 that I instructed you to disregard that characteri-
11 zation.

12 Several of the exhibits that will be with you
13 at the time of your deliberations are contained in
14 police envelopes with preprinted and handwritten
15 notations apparent on the face of the envelope. You
16 will note that many of those envelopes display a
17 preprinted format that includes the word "victim".

18 Those envelopes are standard police envelopes
19 using standard language for police purposes. I
20 instruct you specifically that you are to totally
21 disregard that characterization. It is for you and you
22 alone to determine whether anyone in this matter is a
23 victim.

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1 The law presumes every person charged with a
2 crime to be innocent. This presumption of innocence
3 requires a verdict of not guilty unless you are
4 convinced by the evidence that the defendant is guilty
5 beyond a reasonable doubt. The burden of proof is upon
6 the State to prove all the facts necessary to establish
7 the crimes charged beyond a reasonable doubt.

8 Reasonable doubt is a practical standard. On
9 the one hand, in criminal cases, the law imposes a
10 greater burden than in civil cases. Proof that a
11 defendant is probably guilty is not sufficient. On the
12 other hand, there are very few things in this world
13 that we know with absolute certainty.

14 Therefore, in criminal cases, the law does
15 not require proof that overcomes every possible doubt.
16 Proof beyond a reasonable doubt is proof that leaves
17 you firmly convinced of the defendant's guilt.

18 Therefore, based upon your conscientious
19 consideration of the evidence, if you are firmly
20 convinced that the defendant is guilty of the crimes
21 charged, you should find the defendant guilty. If, on
22 the other hand, you think there is a real possibility
23 or, in other words, a reasonable doubt, that the

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1 defendant is not guilty, you have to give the defendant
2 the benefit of the doubt by finding the defendant not
3 guilty.

4 Before finishing, I want to say a few words
5 about your deliberation process. How you conduct your
6 deliberations is solely within your province. However,
7 I would like to suggest that you discuss the issues
8 fully, giving all jurors a fair opportunity to express
9 their views before committing yourself to a particular
10 position.

11 Each of you has a duty to consult with the
12 others with an open mind and to deliberate with a view
13 toward reaching an agreement. Each of you should
14 decide the case for yourself, but only after
15 impartially considering the evidence with your fellow
16 jurors.

17 You should not surrender your honest
18 convictions solely because of the opinions of your
19 fellow jurors or for the mere purpose of returning a
20 verdict. But you should not hesitate to re-examine
21 your own view and change your opinion if you are
22 persuaded by another view.

23 Ladies and gentlemen, the possible verdicts

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1 in this case are as follows:

2 As to Count 1, possession of a firearm during
3 the commission of a felony: (1) Guilty as charged, or
4 (2) Not guilty;

5 As to Count No. 2, possession of a firearm
6 during the commission of a felony, the possible
7 verdicts are: (1) Guilty as charged; or (2) Not
8 guilty;

9 As to Count No. 3, attempted murder in the
10 first degree, the possible verdicts are: (1) Guilty
11 as charged; or (2) Guilty of assault in the first
12 degree, Section 613(a)(1); or (3) Guilty of assault in
13 the first degree, Section 613(a)(3); or (4) Guilty of
14 assault in the second degree; or (5) Guilty of assault
15 in the third degree; or (6) Not guilty;

16 As to Count No. 4, assault in the second
17 degree, the possible verdicts are: (1) Guilty as
18 charged; or (2) Guilty of offensive touching; or (3)
19 Not guilty;

20 As to Count No. 5, burglary in the second
21 degree, the possible verdicts are: (1) Guilty as
22 charged; or (2) Guilty of criminal trespass; or (3)
23 Not guilty.

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1 All twelve jurors must unanimously agree as
2 to any verdict returned by the jury. To reach a
3 verdict of guilty, you must find that the State has
4 proved the elements of a particular offense unanimously
5 and beyond a reasonable doubt.

6 When you have agreed upon your verdicts,
7 notify the Bailiff and the Bailiff will inform you when
8 to return to the courtroom. Upon your return, the
9 Clerk will ask the Foreperson as to each charge, "What
10 is the jury's verdict?," and your Forepereson will
11 announce the verdict.

12 Those are all of the jury instructions. You
13 will each get a written copy of those. The very last
14 two pages contain definitions that I used previously
15 throughout the instructions. The two previous pages
16 are the verdict sheets. You can, as I said earlier,
17 circle your verdicts on there so that when you come
18 back, it will be easier to go through them.

19 You will get these. You will get all the
20 other evidence that was introduced, and you can take
21 all that back.

22 Right now, I will excuse the four alternates.
23 MRS. WITHERS: May we approach?

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135-

1 IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
2 IN AND FOR SUSSEX COUNTY

3 -
4 STATE OF DELAWARE : I. D. NO. 0210012355
5 :
6 v. : CRIMINAL ACTIONS NOS.
7 JOHN H. BENGE, JR., : S02-10-0927 and 0928
8 : and S03-01-0361
9 Defendant. :
10 :
11 -x

9 T R A N S C R I P T
10 O F
P R O C E E D I N G S

11 Sussex County Courthouse
12 Georgetown, Delaware
Friday, October 10, 2003

13 The above-entitled matter was scheduled for
14 sentencing in open court at 11:00 o'clock a.m.

15 BEFORE:

16 THE HONORABLE E. SCOTT BRADLEY, Judge.

17 APPEARANCES:

18 MELANIE C. WITHERS, Deputy Attorney General,
19 appearing on behalf of the State of
Delaware.

20 JOSEPH A. HURLEY, ESQ., appearing on behalf
of the Defendant.

21

22

23

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1 P R O C E E D I N G S

2 THE COURT: Mrs. Withers, Mr. Hurley, could I
3 see you up at the bench?

4 (Whereupon, counsel approached the bench
5 and the following proceedings were had:)

6 THE COURT: I received a number of letters
7 about the Benge sentencing from people who did not
8 express particularly favorable things about Mr. Benge.
9 I mentioned one of them earlier today to Mr. Hurley.
10 It has never been at issue before as to what defense
11 counsel is entitled to see, so I have never addressed
12 the issue.

13 But Mr. Hurley apparently wants to see the
14 letter that I received from Mrs. Benge's domestic
15 relations attorney, and I don't know what the correct
16 answer is to Mr. Hurley's request. I can say that
17 Mr. Hurley is not going to learn anything that he
18 hasn't heard probably twenty times before, and I didn't
19 read anything that I haven't heard twenty times during
20 the course of the pretrial proceedings.

21 It is a reoccurring theme. When you piece
22 all the letters together, you get the picture that
23 Mr. Benge was a non-productive citizen the last two or

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1 three years; then he lost his law practice; spent too
2 much time sitting around the house drinking; was not
3 out working; then went through a difficult divorce with
4 his wife; and, to some extent, snooped on her and
5 harassed her; and "We are all very concerned about what
6 he might do in the future."

7 If you put all the letters together, that is
8 what you get. I heard that probably right from the
9 get-go when we talked about bail issues. So I learned
10 nothing new in that regard.

11 But I don't know what the correct answer is
12 to Mr. Hurley's request. That's why I asked you come
13 up.

14 MRS. WITHERS: I don't have a problem with
15 Mr. Hurley's seeing it, but I do have a problem with
16 Mr. Benge's seeing it. I do have objection to
17 Mr. Benge seeing the letter.

18 Miss Kerr has concerns for her personal
19 safety with respect to Mr. Benge. I think his being
20 allowed to read the letter, while she understood she
21 may have been taking on that risk, would only add fuel
22 to the fire. If Mr. Hurley wants to read it, I do not
23 have a problem. For Mr. Benge to sit and read through

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1 it word by word would not be in Miss Kerr's best
2 interest.

3 MR. HURLEY: The position I take is that due
4 process requires that any information given to a Judge
5 in conjunction with sentencing must be reviewed. I
6 don't have any particular interest in Mr. Benge's
7 looking at letters from attorneys or letters that have
8 been submitted by persons. I can look at it and I can
9 address the issues.

10 On the other hand, if I felt the need to
11 communicate with Mr. Benge about something specifically
12 that had been addressed in the letter, I would want to
13 be able to get his input if there was a factual
14 statement in a letter.

15 THE COURT: You can look at it. Do what you
16 wish with it, Mr. Hurley. I suspect Mr. Benge know
17 where all the people who contacted me stand on these
18 issues. I have no doubt about that, frankly.

19 MR. HURLEY: You mentioned other letters.
20 I just thought there was this one letter. Are there
21 other letters that have been submitted by supporters of
22 the Mr. Smith-Mrs. Benge group?

23 THE COURT: I received a number of letters

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1 from, I believe, Mrs. Benge, Mr. Smith, and members of
2 the Lovett family. So, yes, there are other letters.

3 MR. HURLEY: Are they attached as exhibits to
4 the Presentence report?

5 THE COURT: They are attached to my copy of
6 the Presentence report. I am not sure what Presentence
7 has or what they gave you, but I am guessing, based on
8 what you told me, that you have not seen any of these
9 letters.

10 MR. HURLEY: I have not. I think I have to
11 look at them.

12 THE COURT: Mrs. Withers?

13 MRS. WITHERS: That is fine, Your Honor.
14 I do have a sentencing downstairs with Judge Graves.
15 At some point when he gets ready, if we are not ready,
16 I may need to go down there.

17 MR. HURLEY: Given what you said they are, I
18 am going to look at them. If it is the same thing
19 regurgitated, I am not going to spend a lot of time.

20 THE COURT: You will make your own judgments.
21 If you read anything you haven't heard before, I will
22 be surprised, but you may.

23 MRS. WITHERS: I would like a chance to look

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1 at Miss Kerr's letter, as well.

2 THE COURT: You two can sort of read it
3 together, or whatever.

4 I will get you the other letters, Mr. Hurley.

5 (Whereupon, the Court proceeded with
6 other court business, after which the following
7 proceedings were had in the above-entitled
8 matter:)

9 MR. HURLEY: If there are going to be
10 comments in court from persons under the statute, I
11 would like to be able to respond to them and I would
12 suggest that the comments be made first so I can then
13 give a complete presentation. I understood there is
14 going to be that.

15 MRS. WITHERS: The defendant is always asked
16 to go first. I don't see any reason to deviate from
17 that standard practice.

18 THE COURT: Why don't you go ahead,
19 Mr. Hurley. I will certainly give everybody an
20 opportunity to talk as long as they want. When you are
21 done, you will tell me, and you won't have anything
22 left unsaid.

23 MR. HURLEY: Does that mean the Court is

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1 precluding me from responding to any comments that are
2 made by witnesses who testify?

3 THE COURT: No. I apologize. I was oblique,
4 I guess. You will be able to respond to everything
5 that is said.

6 MR. HURLEY: Generally speaking, when there
7 has been a trial and a Judge has heard the evidence, I
8 don't know that I say anything except that you heard
9 all the evidence and you can make up your mind for
10 yourself. I will depart slightly -- and slightly is
11 probably about four minutes worth -- in this particular
12 case because of the oddity of this case. The oddity to
13 which I refer is the inflamed passions that this
14 defendant seems to have provoked.

15 I don't, in any way, seek to validate his
16 actions that Sunday morning because that is
17 invalidable. But dealing in the system for as many
18 years as I have dealt in the system, I have, over the
19 years, seen horrific injuries to people, deaths, and
20 vehicular homicides with people who have .30 and a
21 person is dead, and the passion that is inflamed by
22 those losses doesn't parallel what has occurred here.

23 I just don't know why, and I guess I will

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1 never know why. Is it because John Benge is the most
2 odious creature to walk the shores of Delaware? Is it
3 because he is an attorney? What he did that day or
4 intended to do at one point in time, the thought
5 process, is despicable.

6 We will assume, for the purpose of this
7 sentencing, that you will assume, of course, that he
8 did commit the crime of assault. Whether or not that
9 crime of assault was the reckless introduction of a
10 deadly weapon, a gun, into a volatile scene which
11 resulted in injury or whether it was the reckless
12 introduction of spray that caused serious physical
13 injury, we do not know for sure, because they both fall
14 within the penumbra of assault second degree.

15 Despicable behavior, but reckless behavior.

16 When we look at the injuries -- and I am not
17 referring to the psychic injury because that is not
18 measurable. When we look at the physical injury, as
19 cases go, this doesn't rival bar fights where people
20 get twenty-six stitches from lacerations across their
21 face; when people get concussions and are in the
22 hospital for a week; where people get broken limbs and
23 are hospitalized; where people have permanent physical

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1 injuries.

2 Fortunately, by the grace of God, for want of
3 better terminology, the injury that Mr. Smith sustained
4 was relatively minor -- to him, of course, it is not --
5 given, again, the entire globe of people who come
6 before the Court as victims.

7 We stand here relatively certain -- and I
8 haven't talked to the prosecutor -- that the prosecutor
9 is not going to say, "We are asking for the presumptive
10 sentencing guideline." I think probably after
11 "maximum", the prosecution's request would stop.

12 The basic thrust of the letters that you have
13 seen is repetitive, over and over, about what a bad
14 person John was and how horrible he was in his
15 intentions that day. I can live with that. The group
16 of people who came forward, they are associated with
17 Mrs. Benge and Mr. Smith, and it would be expected that
18 they would have that perspective.

19 My concern in those letters -- and as an
20 attorney, I have never seen before, in twenty some odd
21 years, a domestic violence attorney come forward and
22 proclaim to mind read someone, which is remarkable. If
23 we look at that as something for you to consider, the

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1 basic thrust of all those letters is that one of the
2 functions of punishment is warehousing, because the
3 constant theme is, "Judge, if you let him out, he is
4 going to finish his business," and that puts you in a
5 very awkward situation.

6 If I were sitting there, which I am not, it
7 is not fair -- because that is not the Court's
8 function. You can't predict the future any more than
9 these people can predict the future -- to say that it
10 is a valid function of a punishing procedure for you to
11 assume somehow magically, "If I let him out today on
12 time served, if I give him the maximum presumptive
13 sentence guideline, he is going out on the street and
14 he is going to do what he didn't do that day.

15 The law does not allow you to make that
16 assumption, and certainly not because these people
17 basically say, "Warehouse him." That's what it amounts
18 to. "Give him the maximum so he can't get out and do
19 it again." Guess what? He is going to get out some
20 day, and that argument falls on its face in any event.

21 But I suggest to the Court that there are
22 three things that you should be considering. One is
23 the deterrent value; two is the rehabilitation; and

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1 three is the appropriate punishment.

2 With regard to the deterrent value, I don't
3 know that there is anybody out there who says, "Well,
4 here is a lawyer who went out and did some crazy things
5 and he received a year in prison or two years in
6 prison. Well, I am going to go out and do it, too. If
7 he had gotten five years or eight years or nine years
8 and thirty days, I wouldn't do it, but he only got two
9 and a half years, so I think I will go out and do the
10 same thing." So I suggest that the message that needs
11 to be sent is sent when someone is incarcerated as a
12 result of the actions that happened here.

13 With regard to the rehabilitation, I don't
14 know what rehabilitation there is. This is a man who
15 abandoned the moral compass that he had followed
16 through the majority of his life. He is somebody who
17 fell apart. It is sad, pathetic, tragic. He hurt
18 people in doing it, but he did fall apart. Maybe
19 Humpty-Dumpty can be put back together again.

20 The stresses and the pressures led him to do
21 that craziness that day, although not making him
22 legally insane, I suppose, because it is so difficult
23 to find legal insanity. He was crazy as hell that day.

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1 That wasn't John Benge who existed for fifty some years
2 on the face of this world.

3 Presumably he is intelligent enough to
4 reflect upon those events. Hopefully, those events
5 that pushed him that day when he went over the edge are
6 no longer upon him. Presumably, whenever he is
7 released, he will have the mental and emotional
8 wherewithal to turn the page and realize the error of
9 his ways and there will not be a repeat performance of
10 what happened in this particular case.

11 And, lastly, I have to say that in balancing
12 things out, I would suggest that you balance out three
13 things: One is the two and a half hours -- and I
14 didn't sit and count -- with the thousands and tens of
15 thousands he existed on the earth. You balance that
16 two and a half hours against the thousands and
17 thousands and thousands of hours of his being a tax-
18 paying citizen and a pride of a community up until the
19 year 2000 or 1999. He was a good father up to that
20 point in time. They will argue that he is not now. It
21 is hard to be a good dad when you are in prison. You
22 balance that out.

23 And, lastly, look at, fortunately, the

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1 limited nature of the injuries. This is not a case of
2 what could have been; this is a case of what happened.
3 And I suggest to you -- and I don't like to play number
4 games and I don't -- that somewhere in the sentencing
5 guidelines is the appropriate sentence, whether it is
6 the minimum, whether it is the middle, or whether it is
7 the maximum. But I don't think there is anything,
8 considering the mitigators and aggravators, that
9 suggests that you should depart from the presumptive
10 sentencing guidelines.

11 THE COURT: Thank you, Mr. Hurley.

12 Mr. Benge, would you like to say anything?

13 THE DEFENDANT: Yes, Your Honor, just
14 briefly, if I may. I did send you a letter which I
15 assume you have seen. I attempted to express my
16 thoughts in that so as not to burden the Court with a
17 presentation here. I am seeking a chance, Your Honor,
18 to rebuild. I won't be able to do that fully, but that
19 is what I am seeking.

20 THE COURT: All right. I did read your
21 letter, Mr. Benge. Is there anything else you want to
22 say, Mr. Benge?

23 MR. BENGE: No, Your Honor.

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1 THE COURT: Thank you, Mr. Hurley and
2 Mr. Benge.

3 Mrs. Withers?

4 MRS. WITHERS: Donna Benge and Stacey Smith
5 would both like to address the Court, Your Honor. I
6 would ask them to come forward.

7 THE COURT: Good morning, Mr. Smith.

8 MR. SMITH: Good morning. My name is Edward
9 Stacey Smith. I appreciate you letting me speak today
10 in regards to the occurrences that happened not only on
11 the morning of October 20th, that Sunday, but
12 throughout this ordeal. And I make reference to the
13 "ordeal" meaning that it has continued up until today.

14 It will always continue in my own mind. And
15 I just want to reiterate the fact that I am one of two
16 victims here and I am fearful of my life, either
17 directly from John Howard Benge or indirectly should he
18 hire someone to act in his own behalf.

19 He has shown himself to be very clever in his
20 own way with the knowledge of the law. He has used
21 this knowledge as an advantage in planning his violent
22 act. For example, he avoided an attempted murder
23 charge by tying it to breaking and entering and

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1 burglary because he knew the legal definition of these
2 crimes and the seriousness of each of those crimes, or
3 so it seems to me.

4 He very cleverly took keys from others, made
5 copies, and returned those he had taken so no one knew
6 that he had taken them, again to cover up his actions,
7 to get a jump myself and the other victim involved, his
8 ex-wife. He used these keys he had made to gain entry
9 to private premises and avoid the more serious charges
10 should he be caught.

11 There had been restraining orders against
12 this person and he was not to have any weapons. He
13 violated these legal efforts implemented for the
14 victim's safety with impunity.

15 I will always carry with me in my chest the
16 bullet that he fired at me as evidence of his attempt
17 to kill me. I can feel it there as a constant reminder
18 of the violence he perpetrated upon me. It period-
19 ically causes a numbness in my arm and a weakness
20 sometimes when I try to lift with that arm.

21 I suffered hyperventilation brought on by the
22 stress of the trial and had to be treated by an
23 emergency unit after the court session. My heart rate

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1 was measured at one hundred sixty-five and I could not
2 breathe. It was another scary moment in my life from
3 the cause of this horrible act that this man perpe-
4 trated on myself and the other victim involved. It was
5 a terrible feeling brought on by the stress.

6 I have very great concern when my attacker is
7 released, he will continue to drink and plot criminal
8 acts. I have lost a fair amount of time from my
9 teaching job in order to attend the trial testimony and
10 meet with people. My principal has been great, but she
11 does have a school to run. And my co-workers, though
12 they are understanding, must wonder what is happening.

13 In regards to that, I do express to them what
14 is going on. My co-workers, just like my friends,
15 because I treat them as both. I do console with them,
16 share with them, and they take on their own beliefs in
17 what they thought should have happened or should be
18 happening in this trial or in this past trial.

19 I have great anxiety for my safety and those
20 close to me. I have a large family that includes many
21 young nieces and nephews, brothers and sisters. We
22 have family gatherings on a regular basis, and I am
23 tempted to disregard those family gatherings because of

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1 the fear that I have. Now my finally and I have been
2 afraid to meet.

3 We do not know the outcome of this man's
4 fate, nor the fate of myself, nor those around me. My
5 siblings regularly visit me and I them, but they are
6 apprehensive now for fear for their children and fear
7 for themselves. I don't know what to say to them. I
8 don't know how to respond to those comments that they
9 make to me. I feel some burden in this even though,
10 again, I am the victim. I continue to feel victimized.

11 I pray you put this defendant, John Howard
12 Benge, away for a long time. When he is released, no
13 good can come of it and my nightmares will return. I
14 can only speculate what he might have done, what he is
15 capable of doing, and what he may try to do when he is
16 free. I realize that some day he will be free and I
17 will have to live with that, also.

18 I hope for my sake and the sake of those
19 around me and, yes, for his own family that you will
20 sentence John Howard Benge to the maximum allowed by
21 the law for the crimes he has committed, for who can
22 say what he may have done had he gotten past me or what
23 he may try to do in the future.

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1 I thank you for your indulgence.

2 THE COURT: Thank you, Mr. Smith.

3 Mrs. Benge, good morning.

4 MRS. BENGE: Good morning. My name is
5 Donna Kay Lovett Benge.

6 Your Honor, the defendant, John Benge, Jr.,
7 was charged with many more crimes on October 20th last
8 year than were dealt with in these proceedings. You,
9 Your Honor, are aware of the evidence supporting those
10 other charges. The jury was not, nor did they know
11 that I had a protective order against him.

12 The jury saw John Benge as a broken man who
13 failed at everything, including the ability to keep the
14 affections of his wife. I can only assume that the
15 jury saw the incident last October as a marital dispute
16 rather than the seriousness of this crime. I was often
17 called his wife even when speaking of events that took
18 place after the divorce was final.

19 My mistake was to stay in this marriage for
20 as long as I did. I felt that my children needed a
21 mother and father together in the same household. I
22 stayed too long. It became detrimental to my children
23 and to me. Because of his drinking, his mental abuse

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1 and his refusal to seek help or find employment to help
2 provide for his family, I took that step that had been
3 so difficult for me. I separated from him and filed
4 for divorce, not without the understanding and support
5 of my children. They saw the abuse and they felt the
6 antagonism in the home.

7 I felt that my character was marred during
8 this trial. Yet the jury did not see the true
9 character of John Benge, Jr., nor did they understand
10 the reasons why I left him. This man neglected his
11 responsibilities as a lawyer, as a husband, and as a
12 father. He often said the Army stole a year from his
13 life, the Bar Association was out to get him, and he
14 would never repay the debts to his clients as ordered
15 by the Court because he did no wrong. It was the Bar
16 Association that caused him his practice and I was the
17 one that caused the problems in our marriage.

18 Yes, he turned over all the marital assets to
19 me, including the house that was my family home where I
20 grew up. But, Your Honor, I got all the responsi-
21 bilities, as well, the normal household bills, the
22 college tuitions, and many of his debts.

23 I was bound by the Court not to reveal many

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1 things. The State was unable to tell the jury about
2 the disciplinary actions against him; reprimands,
3 probations, suspension, and finally disbarment from the
4 very Bar of which Your Honor, Ms. Withers, and
5 Mr. Hurley are members. You three continue to uphold
6 the values of the Delaware Bar Association. John Benge
7 did not hold himself to those same standards.

8 The defendant stalked me for nearly two
9 years, devoting himself to this course of action as he
10 had never devoted himself to his career. He called my
11 friends asking about me under the guise of being
12 worried. He represented himself falsely to retrieve my
13 phone messages and checked messages on my cell phone.
14 He wrote a letter to a phone company on the phone card
15 taken from my purse fabricating a story that he needed
16 the records in order to be reimbursed for those calls
17 by a former employer and even attaching to that letter
18 a notary seal copied from divorce papers sent to him.

19 During the trial he admitted taking keys from
20 my car while I was at work and copying them. He
21 admitted tapping the phone, spying on me, breaking into
22 my residence, and placing the tape-recorder in my
23 bedroom. I don't believe he told the Court about the

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1 things that he had taken from my home, the bathing suit
2 that he was apparently wearing as he committed the
3 crime last October.

4 Nor did he explain my underwear and Stacey's
5 boxers also taken from my home. We found them each in
6 a plastic bag, one marked Exhibit A and the other
7 Exhibit B, stuffed into an Army surplus mortar casing,
8 along with boxes of bullets that fit both of the guns
9 that he brought to Rehoboth. We found this hidden in
10 the garbage of the Snuff Mill Road house as we readied
11 it for sale.

12 My brothers urged me to file for a
13 Protection From Abuse Order. My divorce attorney did,
14 as well. When he broke into the Florence Avenue home
15 the first time, the New Castle County Police urged me
16 to file for the same protection. He continued to
17 harass me with ugly phone messages left almost daily on
18 my phone at work, at the motel in Rehoboth, or my cell
19 phone, by waiting outside my home to watch Stacey's
20 comings and goings.

21 He called all of my children at any hour to
22 tell them that Stacey was with me. He threatened to
23 make things very uncomfortable for me, proclaiming that

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1 he could change the way the kids felt about me.
2 Although I became increasing afraid, I still did not
3 file for the Protection From Abuse Order.

4 My co-workers were victims of this abuse. I
5 sometimes shared my phone messages with them. They
6 were afraid for me and uncomfortable when John came to
7 my office. They saw him deliver those newspapers
8 containing the divorce information and asking for my
9 autograph. They, too, urged me to get the Protection
10 From Abuse Order. Still, I did not.

11 Once again, New Castle County Police were
12 called to my home at Florence Avenue after the
13 discovery of the voice-activated recorder in my
14 bedroom. They again urged me to get a Protective
15 Order. Finally, two and a half months after the
16 divorce, I filed for the PFA Order. John Benge
17 consented to that order, still refusing to admit any
18 wrongdoing.

19 But just as he had not upheld the standards
20 of the Court in the past, he did not hold himself to
21 the legal conditions of the Protection From Abuse
22 Order. He did not turn over all his guns to New Castle
23 County, as ordered, he did not undergo the alcohol

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1 evaluation, and he did not stay one hundred yards away
2 from me.

3 On October 20th, he violated that Court Order
4 and brutally attacked me and Stacey Smith. The jury
5 was not allowed to know of this Order. I wonder why?
6 I think the outcome of this proceeding may have been
7 much different if they had.

8 John was not truthful in his testimony
9 concerning the events that day. He did viciously
10 attack me many times with that canister of pepper
11 spray, and Stacey Smith did not attack, but did rush to
12 my aid, not knowing that John had two guns.

13 For these reasons, I ask you to consider the
14 fear in which I will live when the defendant is
15 released from jail. I have a new Protection From Abuse
16 Order in place. I filed for this at the urging of my
17 brothers. But tell me, Your Honor, what good has it
18 done me in the past and to what extent can I expect to
19 be protected in the future? I am trying to provide a
20 safe and loving home for my children, free from fear.
21 But how can they expect to be protected?

22 Mr. Hurley placed great emphasis on the fact
23 that John outweighed me by sixty to eighty pounds. He

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1 painted a picture that I could not have escaped his
2 grasp. Well, Your Honor, I do not know how I got away
3 from him that day. My only thought was to fight back.
4 I know that his intentions were far more sinister than
5 his explanation of suicide. I believe all the things
6 he brought with him, the wire cutters, the pepper
7 spray, the ice pick, and the ties, prove that.

8 Maybe I was just lucky last October 20th.
9 Next time -- and I am fearful that there will be a next
10 time -- I may not be so lucky and my children will no
11 longer have a home to come to or a mother or a father.
12 The words of one my children haunt me. "What was he
13 thinking? Was he going to leave us with no one?"

14 Mr. Hurley described John as a leopard that
15 does not change his spots. I agree with that
16 assessment. His deceitful activities have escalated
17 over the years, becoming far more serious and criminal,
18 never taking any responsibility or remorse for his
19 actions. How can I expect him to change his ways?
20 It is frightening to be the object of this obsession.

21 For these reasons, I ask you to sentence John
22 Benge to the fullest extent.

23 Thank you.

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1 THE COURT: Thank you, Mrs. Benge.

2 Mrs. Withers?

3 MRS. WITHERS: Your Honor, I do not intend to
4 make lengthy comments. The letters that you received
5 from the family and friends of Donna Benge and Stacey
6 Smith are eloquent and full of details that are crucial
7 for Your Honor to hear.

8 You presided over the trial. You are aware
9 of the evidence that the jury was allowed to hear. You
10 know the full extent of how frightening Mr. Benge truly
11 is. You know the full extent as to what he obviously
12 intended to do that day when he came down to Rehoboth
13 Beach.

14 The only point I would like to make to Your
15 Honor is the man sitting over there next to Mr. Hurley,
16 the only difference between him now and that man who
17 appeared in that motel room that morning and shot
18 Stacey Smith is that now he is a convicted felon. His
19 life now is only worse. He has no future. He has no
20 family. He has nowhere to go. His wife is still
21 divorced and is still moving on with her life. His
22 purpose that was intended that day has yet to be
23 accomplished.

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1 While Your Honor is left with very little,
2 unfortunately, with which to hurt Mr. Benge, the State
3 will never understand the jury's verdict except, of
4 course, they were hampered by the limitations of
5 evidence that they were allowed to hear. Even so, what
6 they were allowed to hear should have been sufficient
7 for them to understand that Mr. Benge came there with
8 enough ammunition to kill a small Army of people; not
9 just himself.

10 There was no need to cut the phone wires into
11 that motel room if all he intended to do is kill
12 himself. There were so many chances for him to stop
13 and get out of there. Therefore, it is incredible to
14 believe that he only ever intended to hurt himself and
15 he was only trying to get out of there. In fact, it is
16 laughable that that is his explanation.

17 If you do not give him every day of (k) time
18 permitted by statute to keep him in jail for as long as
19 you can, someone is going to wind up dead.

20 THE COURT: Thank you, Mrs. Withers.

21 Mr. Hurley?

22 MR. HURLEY: I don't have anything to
23 respond. I think all the issues have been covered.

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1 THE COURT: All right.

2 Come on up, Mr. Benge.

3 I certainly believe that I am very familiar
4 with all of the facts of this case. I have presided
5 over all of the pretrial matters. I presided over the
6 trial and I had a very extensive presentence investi-
7 gation report done, which I read very diligently.

8 There are many negative things about
9 Mr. Benge that have come to my attention. Mr. Benge
10 was disbarred. Mr. Benge behaved badly during his
11 domestic relations proceedings. Mr. Benge may well
12 have stalked his wife incessantly.

13 While all of those things are very important
14 to all the people involved, in terms of sentencing, I
15 am not giving Mr. Benge one extra day for any of those
16 things. Those are not the kind of things that we
17 necessarily put people in jail for. While I certainly
18 have carefully read every letter and certainly
19 understand why those letters were written and the
20 emotions those people hold, I have put all those things
21 in what I consider to be the appropriate place.

22 There are some positive things that I have
23 learned about Mr. Benge. Mr. Benge graduated from

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1 college and did pretty well. He graduated from law
2 school and did pretty well. He was in the military.
3 He was, I assume, a reasonably productive attorney for
4 a fairly long time. He was a father and spouse, which,
5 I guess again, he did reasonably well for a fairly long
6 time.

7 So I certainly considered all of those things
8 in mitigation and I read everything in great detail.
9 All of his reports from Brandywine High School and Boys
10 State, and all of those things. Mr. Benge did quite
11 well, I think, for a long time.

12 But, frankly, at the end of the day, that did
13 not reduce Mr. Benge's sentence by one day. What I am
14 really focussing on is what Mr. Benge did and what he
15 was convicted of. That is really driving my sentence.
16 I get to see a lot of things -- and I hope you all will
17 take this in the appropriate context -- but not
18 everything moves me as much as this case has moved me.
19 The facts of this case that really are not in dispute
20 have moved me a great deal.

21 I would like to think that I give everything
22 the appropriate level of attention and care. But I am
23 even more concerned than I normally am when the privacy

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1 of someone's home is invaded, and when those people are
2 hurt, I pay a great deal of attention to that. And I
3 think, notwithstanding everything that has been said
4 and everything that I have heard, and accepting the
5 facts largely as Mr. Benge testified to them, that this
6 is still a terrible case on the facts.

7 Mr. Benge left his home and he left his son
8 in Wilmington and he took two guns and he drove the
9 length of this state, and he went into a residence that
10 he had no business being in. He went into a bedroom
11 that he had no business being in. Then, as the jury
12 has found, he created a situation where Mr. Smith was
13 shot. He could have very well been killed. There was
14 no doubt that his wife, while you may dispute what
15 happened to her, was certainly terrified by all of
16 that.

17 So to the extent that there is any confusion
18 about why I am sentencing Mr. Benge the way I am going
19 to sentence him, it is the facts of this case as I
20 believe the jury found them based on their ultimate
21 jury verdict.

22 To the extent I am certainly going to exceed
23 the sentencing guidelines, to the extent that an

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1 aggravator is needed, it certainly would be the fact
2 that Mr. Benge was subject to a Protection From Abuse
3 Order. Mr. Benge is a bright man. He certainly knew
4 he should not have done any of the things that he was
5 convicted of on that day. But those things were
6 certainly brought to his attention by the PFA.

7 He was not supposed to possess guns. He was
8 not supposed to be in contact with his wife and he was
9 not supposed to be on her property. In violation of
10 all of those things, he committed these offenses, as
11 well. So to the extent that an aggravator is needed
12 for the record, that is the aggravator.

13 Mr. Benge, I am going to sentence you as
14 follows:

15 As to Criminal Action No. S03-01-0361, I am
16 going to sentence you to eight years at Level 5 in
17 accordance with 11 Delaware Code, Section 4204(k)(1).
18 You will receive credit for three hundred fifty-six
19 days served. Your Level 5 sentence on that offense
20 will be followed by six months at Level 4 Work Release
21 in accordance with 11 Delaware Code, Section 4204(l).
22 You may be held at the Level 4 Violation of Probation
23 Center pending a spot in the Work Release Program;

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1 As to Criminal Action No. S02-10-0928, I am
2 going to sentence you to one year Level 5, again in
3 accordance with 11 Delaware Code, Section 4204(k)(1);

4 And, lastly, as to Criminal Action No.

5 S02-10-0927, I am going to sentence you to thirty days
6 Level 5, again in accordance with 11 Delaware Code,
7 Section 4204(k)(1);

8 You are not to have any contact with your
9 ex-wife, Mrs. Benge, or her family. The only exception
10 to that is that while incarcerated, you may have
11 contact with your two adult children and your minor
12 child;

13 You are not to have any contact at all with
14 Mr. Smith while incarcerated or while on your
15 probation. While incarcerated, you will have to
16 undergo a program of anger-management counseling and
17 domestic-violence counseling. You will have to be
18 evaluated for substance abuse and comply with any
19 treatment recommendations;

20 You will also have to pay restitution in the
21 amount of fifteen thousand one hundred forty-four
22 dollars and thirty-six cents -- I have the details of
23 that -- as well as the other customary charges

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1 associated with a criminal prosecution.

2 Thank you.

3 MR. HURLEY: Your Honor, one question. You
4 indicated that he can have contact with the children
5 during incarceration. I assume that same thing holds
6 true after his release with regard to Level 4?

7 THE COURT: He may have contact with them
8 while on probation. Two of them are adults. One is a
9 minor. To the extent that they want to have contact
10 with him, I will allow it. Obviously, I think, given
11 the nature of where he is going to be for roughly the
12 next nine years or so, if they don't want to have
13 contact with him, they can largely prevent it.

14 MR. HURLEY: Understood.

15 THE COURT: All right. Thank you.

16 (Whereupon, the proceedings in the above-
17 matter were concluded.)

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1

C E R T I F I C A T E

2 I, EILEEN G. KIMMEL, an Official Court Reporter
3 of the Superior Court of the State of Delaware,
4 Certification No. 120-PS, do hereby certify the above
5 and foregoing Pages 2 to 32 to be a true and accurate
6 transcript of the proceedings therein indicated on
7 October 10, 2003, as was stenographically reported by
8 me and reduced to typewriting under my direct
9 supervision, as the same remains of record in the
10 Sussex County Courthouse at Georgetown, Delaware.

11

12

13

14

Eileen G. Kimmel
Eileen G. Kimmel

15

16

February 26, 2004
Date

17

18

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EILEEN G. KIMMEL
OFFICIAL COURT REPORTER

A159

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE

VS.

JOHN H BENGE

Alias: See attached list of alias names.

DOB:

SBI: 00494395

CASE NUMBER:
0210012355A

CRIMINAL ACTION NUMBER:
IS03-01-0361
ASSAULT 2ND <6 (F)
LIO:ATT. MURDER 1ST
IS02-10-0928
CRIM TRES 1ST (M)
LIO:BURGLARY 2ND
IS02-10-0927
OFF TOUCHING (M)
LIO:ASSAULT W/ SPRA

COMMITMENT

SENTENCE ORDER

NOW THIS 10TH DAY OF OCTOBER, 2003, IT IS THE ORDER OF THE COURT THAT:

The defendant is adjudged guilty of the offense(s) charged. The defendant is to pay the costs of prosecution and all statutory surcharges.

AS TO IS03-01-0361- : TIS
ASSAULT 2ND <6

The defendant shall pay his/her restitution as follows:
See attached list of Payees.

Effective October 10, 2003 the defendant is sentenced as follows:

- The defendant is placed in the custody of the Department of Correction for 8 year(s) at supervision level 5 with credit for 356 day(s) previously served

- Followed by 6 month(s) at supervision level 4 WORK
APPROVED ORDER 1 November 10, 2003 15:11

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STATE OF DELAWARE
VS.
JOHN H BENGE
DOB:
SBI: 00494395

RELEASE

- Pursuant to 11 Del.C.4204(L)
- Hold at supervision level 4 VOPCENTER
- Until space is available at supervision level 4 WORK

RELEASE

This is a mandatory sentence pursuant to DE114204000k .

Probation is consecutive to any probation now serving

**AS TO IS02-10-0928- : TIS
CRIM TRES 1ST**

- The defendant is placed in the custody of the Department of Correction for 1 year(s) at supervision level 5

This is a mandatory sentence pursuant to DE114204000k .

**AS TO IS02-10-0927- : TIS
OFF TOUCHING**

- The defendant is placed in the custody of the Department of Correction for 30 day(s) at supervision level 5

This is a mandatory sentence pursuant to DE114204000k .

APPROVED ORDER 2 November 10, 2003 15:11

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SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE
VS.
JOHN H BENGE
DOB:
SBI: 00494395

CASE NUMBER:
0210012355A

The defendant shall pay any monetary assessments ordered during the period of probation pursuant to a schedule of payments which the probation officer will establish.

Have no contact with the victim(s) Donna Benge , the victim's family or residence.

Have no contact with the victim(s) Edward S. Smith , the victim's family or residence.

See Notes

Zero tolerance for contact with victims

Defendant shall successfully complete anger management, counseling, treatment program.

Participate and complete a certified domestic violence intervention program.

Defendant shall receive mental health evaluation and comply with all recommendations for counseling and treatment deemed appropriate.

Should the defendant be unable to complete financial obligations during the period of probation ordered, the defendant may enter the work referral program until said obligations are satisfied as determined by the Probation Officer.

Be evaluated for substance abuse and follow any recommendations for counseling, testing or treatment deemed appropriate.

APPROVED ORDER 3 November 10, 2003 15:11

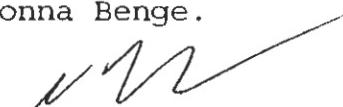
A162

STATE OF DELAWARE
VS.
JOHN H BENGE
DOB:
SBI: 00494395

NOTES

1) The defendant is specifically advised that he is to have no contact with the victims in this matter, by any means. Any communication necessary with his former wife concerning their children shall be carried out through a third party, or in a manner that Family Court directs. There will be zero tolerance for violations of this condition.

2) An additional aggravating factor present is that, at the time of this incident, the offender was subject to a Protection From Abuse Order issued by Family Court, which prohibited him from contacting victim Donna Benge.



JUDGE E. SCOTT BRADLEY

APPROVED ORDER 4 November 10, 2003 15:11

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FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
JOHN H BENGE
DOB:
SBI: 00494395

CASE NUMBER:
0210012355A

SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED

TOTAL CIVIL PENALTY ORDERED

TOTAL DRUG REHAB. TREAT. ED. ORDERED

TOTAL EXTRADITION ORDERED

TOTAL FINE AMOUNT ORDERED

FORENSIC FINE ORDERED

RESTITUTION ORDERED 15144.36

SHERIFF, NCCO ORDERED 75.00

SHERIFF, KENT ORDERED

SHERIFF, SUSSEX ORDERED 510.00

PUBLIC DEF, FEE ORDERED

PROSECUTION FEE ORDERED 100.00

VICTIM'S COM ORDERED

VIDEOPHONE FEE ORDERED 3.00

TOTAL 15,832.36

APPROVED ORDER 5 November 10, 2003 15:11

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RESTITUTION SUMMARY

STATE OF DELAWARE
VS.
JOHN H BENGE
DOB:
SBI: 00494395

CASE NUMBER:
0210012355A

AS TO IS03-01-0361 :

The defendant shall pay restitution as follows:

\$	1985.96	to VIOLENT CRIMES COMPENSATION
\$	645.00	to DONNA BENGE
\$	3022.67	to EDWARD S SMITH
\$	9490.73	to COVENTRY HEALTH CARE

APPROVED ORDER 6 November 10, 2003 15:11

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LIST OF ALIAS NAMES

STATE OF DELAWARE
VS.
JOHN H BENGE
DOB:
SBI: 00494395

CASE NUMBER:
0210012355A

JOHN BENGE

APPROVED ORDER

7

November 10, 2003 15:11

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AGGRAVATING-MITIGATING

STATE OF DELAWARE
VS.
JOHN H BENGE
DOB:
SBI: 00494395

CASE NUMBER:
0210012355A

AGGRAVATING

UNDUE DEPRECIATION OF OFFENSE
OTHER

APPROVED ORDER

8

November 10, 2003 15:11

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CLASS D FELONY - VIOLENT CATEGORY: FDV CORRECTED

Statutory Range	0 to 8 years
Presumptive Initial Level	Level V
Presumptive Sentence Length	Up to 2 years

Crimes in VIOLENT category :

11-612	Assault 2
11-771	Rape 3
11-777	Bestiality
11-802	Arson 2
11-325	Burglary 2 (Minimum sentence: SEE NEXT PAGE)
11-835	Carjacking 2 nd : take vehicle from another person by coercion
11-1109	Dealing in Child Pornography
11-1250(c)	Assault 1 on Law enforcement animal (Death or serious injury)
11-1253	Escape After Conviction (SEE SPECIAL CATEGORY P.35)
11-1254(a)	Assault in Detention Facility (SEE NOTE NEXT PAGE)
11-1254(c)	Assault in Detention Facility by fluid (SEE NOTE NEXT PAGE)
11-1304	Hate Crime (SEE NEXT PAGE)
11-1312A(e)	Stalking - with threat of death or serious injury
11-1338	Mfr/Use/Poss Explosive or Incendiary Device
11-1448(e)	Poss. of Firearm by Person Prohibited(SEE NOTE NEXT PAGE)
11-1448 (a)6	Poss. Firearm Under PFA Order
11-1448 (a)7	Possess Firearm com Domestic Viol
11-1459	Alter gun numbers
11-3533	Aggravated Intimidation
16-1136	Abuse, Neglect of Facility Patient/resident causing injury
16-4752A	Unlawful delivery Non-controlled Substance (SEE NOTE NEXT PAGE)
31-3913(c)	Abuse of infirm adult causing bodily harm

STANDARD SENTENCES FOR PRIOR CRIMINAL HISTORY CATEGORIES

CLASS D. FELONY VIOLENT	Presumptive Aggravated Sentence
B While on release or pending trial or sentencing	UP TO 4 yrs at Level V
C Two or more prior felonies	UP TO 4 yrs at Level V
D One Prior violent felony	UP TO 4 yrs at Level V
E Two or more prior violent felonies	UP TO 8 yrs at Level
F Excessive Cruelty	UP TO 8 yrs at Level V

If crime is a secondary offense, use the non-aggravated presumptive.

- All sentences for over 1 year at Level V require six month reintegration at Level IV, III, OR II.
- All Criminal fines require 18% surcharge for Victims fund.
- All Drug crimes require additional 15% surcharge for rehab fund

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Notes for Violent Felony D

11-825 Burglary 2 - Effective 9/1/94 MINIMUM PRESUMPTIVE SENTENCE

First Conviction --	12 to 36 Mo. at level V
While on Release or pending Trial	18 to 36 Mo. at Level V
Two or more prior felonies --	36 to 72 Mo. at Level V
One Prior Violent Felony --	36 to 72 Mo. at Level V
Two or more prior violent felonies -	48 to 96 Mo. at Level V
Excessive cruelty --	48 to 96 Mo. at Level V

11-835(b)2 Carjacking 2nd take vehicle from an: effective 1999/05/12: Becomes Felony D if one of these three elements is present: Recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person, or compels a lawful occupant of the vehicle to leave the vehicle, or causes the vehicle to be operated recklessly

11-1254(a) Requires 2 year mandatory min. sentence to Level V which must interrupt the original sentence of confinement.

11-1254(c) Assault in Detention Facility State calls for a minimum mandatory sentence of one year for striking with bodily fluids, as well as testing for diseases transmittable through bodily fluids.

11-1304 Hate Crime: If underlying offense is Felony D, sentence as if it were a Felony C.

11-1305 11-1448(a)7 Possess Firearm com Domestic Viol : effective 1999/07/24.

11-1448(a)6 Possess Firearm under PFA order: effective 1999/07/24.

11-1448(e) Requires Minimum Sentence of one year at Level V.

16-4752A Sentence is governed by the penalty for delivery of the substance which the defendant represented the noncontrolled substance to be. If no specific express or implied representation was made, the penalty shall be that for delivery of a nonnarcotic controlled substance. Section 4751(b) of Title 16 shall not apply

16-4763(c) One year @ Level V if moved to DE to engage in drug sales

CLASS A MISDEMEANOR

Crimes in Category MA1 - VIOLENT

Statutory Range	0 to 1 yr
Statutory Fine	UP TO \$2,300
PRESUMPTIVE SENTENCE	<u>1st offense</u> UP TO 12 Mo @ Level II <u>2nd offense in 2 yrs.</u> Up to 6 Mo @ Level III AND Up to 6 Mo @ Level II <u>3rd offense in 5 yrs</u> Up to 3 Mo @ Level V AND Up to 9 Mo@ Level II

- 11-603 Reckless Endangering 2 (**Spec. Category P.46 may apply**)
 11-611 Assault 3 (**Spec. Category P. 46 may Apply**)
 11-614 Assault on Sports official
 11-621 Terroristic Threatening (**Spec. Category P.46 may apply**)
 11-766 Incest (**Spec. Category P.46 may apply**)
 11-767 Unlawful Sexual Contact 3 (**Spec. Category P.46 may apply**)
 11-1443 Concealed Dangerous Instrument
 11-1250(b) Assault Law enforcement animal with risk of injury
 11-1257A Animal to Avoid Capture
 11-1271 Crim Contempt Dom Viol Prot phy inj
 11-1304 Hate Crime (**SEE NOTE BELOW**)
 16-1136 Abuse of patient in Residential Facility
 31-3913 Abuse, Neglect of Infirm Adult
 - All sentences for over 1 year at Level V require six month reintegration at Level IV, III, OR II.
 - All Criminal fines require 18% surcharge for Victims fund.
 - All Drug crimes require additional 15% surcharge for rehab fund
 Note: 11-1304 Hate Crime - If underlying offense is a Misdemeanor, the presumptive sentence for Felony G (Violent) will apply.
 11-1257 Becomes felony G if injury to LE or a felony
 11-1271A0c1 Crim Contempt Dom Viol Prot phy inj: effective 1999/06/24: Minimum 15 days incarceration if: physical injury, or threat or use of deadly weapon, or third or subsequent conviction .

CLASS A MISDEMEANOR

Crimes in Category MA2 - ESCAPE 11-1251

Escape 3 (SEE SPECIAL CATEGORY P.35)

Statutory Range	0 to 1 yr
Statutory Fine	UP TO \$2,300
PRESUMPTIVE SENTENCE	UP TO 3 Mo at Level IV Recommended Maximum UP TO 1 Mo@ Level V

- All sentences for over 1 year at Level V require six month reintegration at Level IV, III, OR II.
 - All Criminal fines require 18% surcharge for Victims fund.
 - All Drug crimes require additional 15% surcharge for rehab fund

CLASS A MISDEMEANOR			
Crimes in Category MA3 - Property Crimes			
Statutory Range	0 to 1 yr		
Statutory Fine	UP TO \$2,300		
PRESUMPTIVE SENTENCE	1st Offense	I	UP TO 12 Mo.
	2nd offense in 18 Mo.	II	UP TO 6 Mo
	3rd offense in 3 yrs.	IV	UP TO 3 Mo AND II UP TO 9 Mo.
	Recommended Maximum @V		up to 15 days

11-804	Reckless Burning (damage under \$1500)
11-805	Cross or Religious Symbol Burning
11-811(b)(2)	Criminal Mischief over \$1000
11-823	Criminal Trespass 1
11-840	Shoplifting < \$1000
11-841	Theft < \$1000
11-842	Theft - lost or mislaid property
11-843	Theft - False Pretense
11-844	Theft - False Promise
11-845	Theft of Services
11-848	Misapplication of Property < \$1000
11-849	Theft of rental property < \$1000
11-851	Receiving Stolen Property < \$1000
11-853	Unauthorized Use - Vehicle
11-861(b)(3)	Forgery 3 (restitution req'd if loss suffered)
11-891	Defrauding Secured Creditors
11-892	Fraud in Insolvency
11-900	Issue Bad Check < \$1000 (Restitution & Fee Required)
11-903	Unauthorized Use - Credit Card < \$1000
11-906	Deceptive Business Practices
11-916	Home Improvement Fraud < \$500
11-917(d)	New Home Construction Fraud <\$1,000
11-918	Ticket Scalping - Second Offense
11-937(e)	Computer Crime 5
11-938	Comp Crime 5th fail to cease <=\$500
11-1304	Hate Crime (Sentence as a Violent Felony G)
31-1003	False Statement to obtain Benefits <\$500
31-1004(2)	False Benefit Reimbursement Statement <\$500
31-1006	Unlawful Conversion of Benefits <\$500
31-3913(a)	Abuse, exploit, neglect of infirm adult
-	All sentences for over 1 year at Level V require six month reintegration at Level IV, III, OR II.
-	All Criminal fines require 18% surcharge for Victims fund.
-	All Drug crimes require additional 15% surcharge for rehab fund
11-937(a)	Comp Crime 5th Unre e-mail </= \$500 : effective 1999/07/02 : Fines between \$100 and \$500, plus injunctive relief in Chancery Court
11-937(b)	Comp Crime 5th Falsify </= \$500: effective 1999/07/02: Fines between \$100 and \$500, plus injunctive relief in Chancery Court
11-937(c)	Comp Crime 5th sell softw </=\$500: effective 1999/07/02.
11-938(a)	Comp Crime 5th fail to cease <=\$500: effective 1999/07/02.

Misdemeanor B Offenses

Statutory Range	UP TO 6 Months
Statutory Fine	UP TO \$1,150
PRESUMPTIVE SENTENCE	1st or 2nd offense: Fine, Costs, Restitution Only 3rd Offense in 2 yrs: Level I or II Up to 6 Mo

11-653	Issuing Abortion Articles
11-820	Trespass with Intent to Peep
11-850	Possess or Deal in Device for Unl. Taking of Telecommunication Services
11-910	Debt Adjusting
11-917	Ticket Scalping - First Offense
11-1106	Unlawful Dealing with Child
11-1113	Criminal non-support
11-1114	Body Piercing & Tattoos
11-1241	Refusing to Aid Police Officer
11-1248	Obstructing Control of rabies
11-1271(1)	Criminal Contempt (Disorderly or Insolent Behavior in Court)
11-1273	Unlawful Grand Jury Disclosure
11-1304	Hate Crime - sentence as a violent Felony G
11-1311	Harassment (Special Category on pp 46 may apply)
11-1313	Malicious Obstruction of Emergency Phone Calls
11-1325(a)	Trade in Dog/Cat ByProducts (fur or hair)
11-1326(b)	Fighting and Baiting Animals
11-1333	Trading in Human Remains or Funerary Objects
11-1341	Lewdness
11-1342	Prostitution
11-1355	Permitting Prostitution
11-1452	Unlawful Dealing with Knuckles-combination Knife (SEE NOTE BELOW)
11-1453	Unlawful Dealing with Martial Arts Throwing Star (SEE NOTE BELOW)
11-1457(j)(2)	Poss. Weapon in Safe School/Recr. Zone
16-4754	Possess/Use/Consumption Non-Narcotics (SEE NOTES BELOW)
16-4754A	Possession of Noncontrolled Prescription Drug

- All Criminal fines require 18% surcharge for Victims fund.
- All Drug crimes require additional 15% surcharge for rehab fund

16-4754 Under the provisions of Title 16, Sec. 4763, if there is a prior conviction of a Title 16 offense, the statutory range increases to 2 years.

16-4764 Effective October 11, 1990, first offense waiver on a Title 16 charge requires 3 years probation at Level I, treatment program, drivers license revocation and community service.

11-1452 AND 11-1453 These offenses become Misdemeanor A if act occurs in a safe school or recreation zone.

11-1114 Body Piercing & Tattoos becomes Mis A for second offense

Unclassified Misdemeanors	
Statutory Range	UP TO 30 Days
Statutory Fine	UP TO \$575
Presumptive Sentence	1st or 2nd offense: Fine, Costs, Restitution Only 3rd Offense in 2 yrs: Level I or II Up to 6 Mo.

11-601	Offensive Touching (Special category pp 46 may apply)
11-602	Menacing (Special category pp 46 may apply)
11-627	Substances Releasing Vapors or Fumes
11-763	Sexual Harassment (Special category pp 46 may apply)
11-764	Indecent Exposure 2
11-811(b)(3)	Criminal Mischief - Loss less than \$1000
11-812	Graffiti
11-822	Criminal Trespass 2
11-850	Poss/deal unlawful telecommunication devices (1 to 4)
11-914	Unlawful use of Consumer Identification Info
11-915	Unlawful use of Credit card information
11-922	Improper Labelling
11-925	Video Privacy Protection
11-1107	Endangering Children
11-1245	Falsely Reporting Incident
11-1250(a)	Harassment of K-9 dog
11-1301	Disorderly Conduct (Special category pp 46 may apply)
11-1304	Hate Crime - If offense is unclassified Misdemeanor, sentence as Misd A.
11-1315	Public Intoxication (If Third Offense in 1 Year)
11-1322	Criminal Nuisance
11-1324	Obstructing Ingress/Egress at Public Building
11-1343	Patronizing a Prostitute
11-1404	Providing Premises for Gambling (unless 2nd offense in 5 yr.)
11-1445	Unlawful Dealing with Dangerous Weapon [except subsection(4) class G felony or (5) class E felony]
11-1446	Unlawful Dealing with Switchblade (SEE NOTE BELOW)
11-1907	Fail to answer Summons
11-2113	Breach conditions of Release
11-4120	Registration of sex offenders
11-6562A	Furnishing contraband
16-2513	Threat/intimidation to withdraw medical maintenance (Fine \$500 to \$1000)
16-3111	Violations concerning vital statistics records
16-4757(c)	Possession of Hypo Syringe or Needle
16-4774	Advertisement of Drug Paraphernalia
16-6611	Maintaining Fire Hazard
16-6905	Sell or Possess Fireworks

ANY OTHER OFFENSE NOT SPECIFICALLY DEFINED AS A FELONY, CLASS A MISDEMEANOR, CLASS B MISDEMEANOR OR VIOLATION.

- All Criminal fines require 18% surcharge for Victims fund.
- All Drug crimes require additional 15% surcharge for rehab fund

NOTE: 11-1446 becomes a misdemeanor B if act occurs in a safe school or recreation zone.

Special Domestic Violence Category

Due to the peculiar nature of criminal charges involving domestic violence, which may be considered as deserving aggravated punishment in that the actions have been repetitive prior to the first formal charge in Court, **and in that children are often witnesses or victims of domestic violence**, the following recommendations are presented. If the guidelines in this category are used, the sentencing order/worksheet must identify the charge as "Domestic Violence Involved".

CLASS G NON-VIOLENT FELONY Statutory Range- 0 to 2 years

11-1213 Aggravated Harassment

Presumptive Sentence: Up to 12 months at Level II

CLASS A MISDEMEANORS Statutory Range - 0 to 1 years

11-603 Reckless Endangering 2

11-611 Assault 3

11-621 Terroristic Threatening

11-766 Incest

11-767 Unlawful Sexual Contact 3

11-781 Unlawful Imprisonment 2

11-791 Coercion

11-885 Interference with Custody

11-1101 Abandonment of Child

11-1102 Endangering Welfare of Child

11-1271A Criminal Contempt of Family Court Protection From Abuse order

CLASS B MISDEMEANORS Statutory Range - 0 to 6 Months

11-1311 Harassment

Presumptive Sentence (Misd A or B)

Level

Time

1st Offense V Up To 1 Month

2nd Offense in 2 years V Up to 2 Months

3rd Offense in 5 years V Up To 3 Months

UNCLASSIFIED MISDEMEANORS Statutory Range - 0 to 30 days

11-601 Offensive Touching

11-602 Menacing

11-763 Sexual Harassment

11-1301 Disorderly Conduct

Presumptive Sentence

Level

Time

Any offense V Up To 1 month

Enhanced Penalties applicable when:

children are present during the crime OR are victims of the offense
against a co-defendant if a conspirator was under the age of 14 and the codefendant was 4 or
more years older than the child at the time of the crime. (Enhanced penalty for ANY crime)

Enhanced Presumptive Sentence:

Level

Time

Any Non-Violent Felony G II 12 months or more

Misd A or B:

1st Offense V 1 to 2 months

2nd Offense in 2 years V 2 to 3 months

3rd Offense in 5 years V 3 or more months

Any Unclassified Misdemeanor V 1 or more months

(Revised 9/22/98, 10/7/98)

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result of conviction for any criminal offense.

Repetitive Behavior - The offender persists, after notice, in actions which constitute a pattern of behavior which repeats a past record of non-amenability to community sanctions.

Revocation - An order revoking probation may be entered when it is the intention of the Court to raise the level of intensity of supervision after finding that probation has been violated.

Substantial Risk - The threat of repetitive violations or causing physical injury to self or others is high.

Willful Failure to Pay - A failure to pay a monetary obligation despite the availability of resources with which to pay the obligation, or the refusal to take steps to obtain the resources to pay the obligation.

Violation of Probation Sentencing Standard

When a violation of probation hearing is held and determination is made that the offender is guilty of the violation and probation is to be revoked, it is presumed that the offender may move up only one SENTAC level from his/her current level.

AGGRAVATING CIRCUMSTANCES

An offender may have his/her level of supervision raised more than one level if any of the following aggravating circumstances exists:

- A. Conviction of a new offense which was a felony, a violent misdemeanor, or an offense requiring a mandatory sentence.
- B. The violation is a violation of a special treatment condition , e.g., offender willfully refuses to attend the ordered program and, as a result of such refusal, poses a substantial threat to the community or himself. Confinement in this instance should be short-term and could consist of either a Level IV, quasi-incarceration, or a Level V, incarceration, situation until treatment is arranged.
- C. The offender has demonstrated willful failure to make court-ordered payments, and no other alternatives are possible, or those alternatives would depreciate the seriousness of the offense.
- D. the offender is found to be in possession of a weapon, leading to the violation, and the offender has a past history of violence, drug trafficking or weapons violations.
- E. The behavior of the offender represents an immediate threat to the community or an identified victim.
- F. The behavior of the offender is repetitive and flagrantly defies the authority of the court.

Length of Level V Sentences - Invocation of SENTAC Standard

WHEN A PERIOD OF INCARCERATION IS DETERMINED to be the sanction of choice for a violation of probation, a Level V sanction should be in accordance with the current SENTAC standard presumptive sentence for the original crime for which the probation is being served. If the presumptive sentence is less than level V, the sentence for violation of probation should be UP TO 25% of the statutory maximum.

Effective June 30, 1990, all Violation of Probation sentences must be designated as to whether they are "Truth in Sentencing" or "Non TIS" sentences. A defendant who had an original non-TIS sentence and is violated may not be given a TIS sentence for the violation, unless he specifically agrees thereto, and the sentence is given in relation to TIS guidelines. Designation is imperative so that DOC can maintain proper records on the time to be served, goodtime credits, and parole eligibility.

Procedural Recommendations for Monitoring purposes:

1. Sentencing orders (and worksheet forms) should refer to all violations as "Violation of Level ____", where the blank contains the current level designation.

2. In addition to the above designation, all violation orders, regardless of specific format, should contain the following information:

Client name, Effective date of sentence, Original offense, Type of action: i.e. terminated, continued, modified, or revoked as defined above. New sentence Level(s) and time(s), TIS or NON-TIS status, Aggravating factor(s): if necessary due to a two- level (or more) increase, or a longer than standard sentence length at Level V.